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Supreme Court, U.S.
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No. 07-____

IN THE

Supreme Court of the United States

IN RE AHMED BELBACHA

PETITION FOR A WRIT OF HABEAS CORPUS

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QUESTIONS PRESENTED

1. Whether any federal court has jurisdiction to hear Belbacha's claim that he should be granted asylum and not rendered to Algeria.

2. Whether Belbacha should be denied such protections as those provided by the Convention Against Torture and the Refugee Convention while this Court is considering the constitutionality of the jurisdiction-stripping provisions of the Military Commissions Act of 2006.

3. Whether Belbacha satisfies the standards for issuance of the writ, in particular:

(a) whether issuance of the writ would be in aid of the Court's jurisdiction because Belbacha's rendition to Algeria would moot (1) his pending petition for certiorari before judgment seeking review of the district court's denial of his motion for a temporary restraining order; (2) the habeas action that he has brought in the district court seeking his release from Guantánamo to a country where he will not face torture or other abuse; and (3) his pending application for asylum in the United States;

(b) whether exceptional circumstances warrant the exercise of the Court's discretionary powers because, if Belbacha is rendered to Algeria, he faces torture or other abuse at the hands of the Algerian government or Islamist extremists; and

(c) whether adequate relief can be obtained in any other form or from any other court given the D.C. Circuit's conclusion that its decision in *Boumediene* deprives it of jurisdiction to grant relief.

PARTIES TO THE PROCEEDING

Petitioner is Ahmed Belbacha. Respondents are George W. Bush, President of the United States; Robert M. Gates, Secretary of Defense; and Rear Admiral Mark H. Buzby, Commander, Joint Task Force – Guantánamo.

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United States Department of State, Algeria Country Report on Human Rights Practices 2006, *available at* http://www.state.gov/p/nea/ci/81993.htm 6

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Amnesty International Urgent Action 173/06 *Incommunicado detention / fear of torture or other ill-treatment*, June 20, 2006, *available at* http://web.amnesty.org/library/Index/ENG MDE280112006?open&of=ENG-DZA 6

Amnesty International, *Annual Report 2007: Algeria, available at* http://thereport.amnesty.org/eng/ Regions/Middle-East-and-North-Africa/ Algeria 6

Immigration and Refugee Board of Canada, *Issue Paper: Algeria, available at* http://www.irb cisr.gc.ca/en/research/publications/index_e.htm?docid =115 &cid=0&sec=CH05 3

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JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §§ 1651(a) and the Suspension Clause, art. I, § 9, cl. 2.[1]

CONSTITUTIONAL PROVISION INVOLVED

The Suspension Clause provides:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

RULE 20 STATEMENT

Petitioner, Ahmed Belbacha, is a citizen of Algeria and a former resident of the United Kingdom. He is in the custody of the United States at Guantánamo in violation of the Constitution or laws or treaties of the United States. Belbacha seeks the writ to prevent respondents from rendering him to Algeria. There, Belbacha faces torture and other abuse at the hands of the Algerian government, which associates

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[1] Section 2241(a) and (b) authorize the Court to entertain applications for writs of habeas corpus and to grant such writs, but section 2241(e)(1) purports to deny the Court jurisdiction to do so in the case of a Guantánamo detainee:

> No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant.

The Court has granted review in *Boumediene v. Bush*, No. 06-1195, to consider whether section 2241(e)(1) is constitutional. The Court has jurisdiction to maintain its jurisdiction pending its determination of its jurisdiction. *See United States v. United Mineworkers*, 330 U.S. 258, 291-92 (1947).

Belbacha with local Al Qaida forces; and at the hands of Al Qaida forces, which associate him with the Algerian government.

Issuance of the writ would be in aid of the Court's jurisdiction because Belbacha's rendition to Algeria would moot (1) his pending application for asylum in the U.S.,[2] (2) the petition for certiorari before judgment that he is filing, concurrently with this petition, seeking review of the district court's denial of his motion to stay his rendition, and (3) the habeas action that he has brought in the district court seeking his release from Guantánamo to a country where he will *not* face torture or other abuse; Exceptional circumstances warrant the exercise of the Court's discretionary powers because, if Belbacha is rendered to Algeria, he faces torture or other abuse at the hands of the Algerian government or Islamist extremists. Finally, inasmuch as the district court and the Court of Appeals have denied Belbacha's emergency stay motions, adequate relief cannot be obtained in any other form or from any other court.

STATEMENT

1. Petitioner, Ahmed Belbacha, is a citizen of Algeria and a former resident of the United Kingdom. After finishing mandatory national service in Algerian army, Belbacha worked as an accountant at Sonatrach, the government-owned oil company. While working there, Belbacha was recalled for a second term of service. The Groupe Islamique Armée (GIA)

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[2] On July 11, 2007, counsel for Belbacha submitted an asylum application to the responsible agencies. Counsel have provided respondents a copy of the application.

– then at the height of its violent campaign for an Islamic Algeria – found out about the recall notice.[3] The GIA threatened to kill Belbacha if he rejoined the army and ordered him to quit his job with Sonatrach. The GIA was notorious for killing soldiers and had also murdered a number of Sonatrach employees.[4]

Belbacha never reported for his recall, making him a deserter in the eyes of the Algerian government. He tried to hide from the GIA inside Algeria, but the group pursued him, going at least twice to his home and threatening him and his family. Deciding that he had to leave Algeria, Belbacha obtained a French visa and fled. After a few days in France, Belbacha went to England. There, he went to Bournemouth, where he had childhood friends. In July 2000, he applied for asylum in England. Belbacha chose England because it has a reputation for respecting human rights, and France had a significant GIA presence.

Belbacha's well-founded fear of persecution has only intensified since the U.S. brought him to Guantánamo. In the eyes of extremist groups like "Al

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[3] The GIA has carried out attacks in Algeria against civilians and regime officials and employees for years. *See* "Group Profile: Armed Islamic Group," http://www.tkb.org/Group.jsp?groupID=27. The GIA later spawned a splinter group now called "Al Qaeda in the Islamic Maghreb." This group continues to carry out violent attacks in Algeria. *See* Craig Whitlock, "Al Qaeda Branch Claims Algerian Blasts," Wash. Post, Apr. 12, 2007.

[4] *See Issue Paper: Algeria*, Immigration and Refugee Board of Canada (detailing threats and attacks against Sonatrach employees beginning in 1996), http://www.irb-cisr.gc.ca/en/ research/publications/index_e.htm?docid=115 &cid=0&sec=CH05.

Qaeda in the Islamic Maghreb," Belbacha is still an ex-soldier and a Sonatrach employee. Should he be rendered to Algeria, the group will likely target him again. At the same time, Belbacha will *also* return to Algeria having been branded by the U.S. as an "enemy combatant" with asserted links to Al Qaeda. These assertions are baseless. But, given that the Algerian government considers Belbacha a deserter, it is likely, if not certain, that the Algerian authorities will imprison and torture him.

Caught between domestic terror groups and a government that brutalizes suspected Islamists, Belbacha cannot safely return to Algeria. His fear is such that he would prefer to endure the oppressive environment of Guantánamo until an asylum state can be found. It is worth pausing to consider exactly what that means: At Guantánamo, Belbacha is held in near-total isolation. Every surface in his cramped cell is made of steel. No window lets sunshine in; he suffers the glare of neon lights 24/7. His only diversion is two hours for "rec" alone in a pen with a deflated football. His family may not visit him, he may not call them, their mail takes months to reach him. When it does, it is often heavily censored. This is the world Belbacha chooses over rendition to Algeria.

2. On December 8, 2005, Belbacha filed a petition for a writ of habeas corpus in the District Court. On July 26, 2007, he filed in the district court an emergency motion to prevent his transfer to Algeria. On July 27, 2007, the district court denied the motion. (Pet. App. A.) The court stated that *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), deprived it of jurisdiction to grant Belbacha's motion. For the same reason, the district court also orally denied Bel-

bacha's motion for a stay of transfer pending appeal. Counsel noticed an appeal on July 27, 2007.

On July 28, 2007, Belbacha filed an emergency motion in the D.C. Circuit to stay his transfer to Algeria pending appeal from the district court's denial of his stay motion. The court denied Belbacha's motion on August 2, 2007, instead ordering an expedited briefing schedule, which has not yet been issued. (Pet. App. B.) Citing *Boumediene*, the D.C. Circuit stated that it was "bound to follow circuit precedent until it is overruled by an en banc court or the Supreme Court." *Id.* (citation omitted).

REASONS FOR GRANTING THE WRIT

The issue here is whether any federal court has jurisdiction to hear Belbacha's claim that he should be granted asylum and not rendered to Algeria. Congress, in the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006) ("MCA"), has purported to deny jurisdiction to afford Belbacha such a hearing. The Court has granted certiorari in *Boumediene v. Bush*, No. 06-1195, to consider whether the MCA's jurisdiction-stripping provisions are constitutional. In addition to the constitutional defects asserted by the petitioners in that case, as Belbacha explains in his petition for certiorari before judgment, those provisions also violate the Convention Against Torture and the Refugee Convention. Those Conventions should not be denied effect while the constitutionality of the MCA's jurisdiction-stripping provisions remains an open question.

The U.S. recognizes that Algeria tortures, and imposes cruel, inhuman or degrading punishment on, prisoners.[5] The U.S. acknowledges that Algerian security forces operate with impunity, wringing false confessions out of prisoners; the security forces apparently reserve their harshest abuse for suspected Islamist terrorists.[6] Whatever undisclosed "assurances" the Algerians have offered about how they would treat Belbacha, these are not to be believed, not least because they cannot be enforced. Belbacha also faces abuse by Islamist radicals over whom the Algerian Government exercises no control.

Officials in England, Belbacha's last permanent home, agree. A U.K. government report provides a gruesome list of torture methods employed in Algeria.[7] Just last week, the British Court of Appeal

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[5] *See* United States Department of State, Algeria Country Report on Human Rights Practices 2006, released March 6, 2007, http://www.state.gov/p/nea/ci/81993.htm.

[6] *Id.* (torture "continued to occur in military prisons, more often against those arrested on 'security grounds'"). *See also* Amnesty International Urgent Action 173/06 *Incommunicado detention/fear of torture or other ill-treatment*, June 20, 2006, http://web.amnesty.org/library/Index/ENG MDE280112006?open&of=ENG-DZA; Amnesty International *Annual Report 2007: Algeria*, http://thereport.amnesty.org/eng/Regions/Middle-East-and-North-Africa/ Algeria (finding Algerian security services hold terrorism suspects in secret locations for up to several months, deny them contact with the outside world, and abuse them).

[7] These include beatings with fists, batons, belts, iron bars, plastic pipes or rifle butts; whipping; cutting with sharp objects; hitting the soles of the feet; soldering irons or cigarette butts applied to bare skin; burning cigarette ash thrown into the eyes; electrical shocks to the body, often to sensitive organs such as the genitals, to increase the pain the victim's body may be soaked first in water; attempted strangulation, almost to the

(...continued)

barred the repatriation of three Algerians because of unresolved – or unjustly resolved – allegations that they would face persecution on their return.[8] The British courts have insisted on a proper hearing on this issue; this Court should accept no less. Once respondents have rendered Belbacha to Algeria, the bell cannot be unrung.

CONCLUSION

Petitioner requests that the Court issue a writ to respondents enjoining them from rendering Belbacha to Algeria pending the Court's decision in *Boumediene*. Once it has decided that case, the Court should order further briefing to address the effect of the decision on this case.

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point of suffocation; sexual assault or the threat of rape; forced to look on while others are being tortured; hanging by the neck until loss of consciousness; placing lighted newspapers on the body; the 'chiffon', in which the victim is tied down and a rag is forced into the mouth and dirty water, containing detergent and other impurities, such as urine or household chemicals, poured through it which the victim is forced to swallow to induce choking. *See* Home Office, Immigration and Nationality Directorate, Country Information and Policy Unit, *Algeria Country Report*, Apr. 2004, ¶ 6.24, as cited in Human Rights Watch, UK: *Empty Promises Can't Protect People From Torture* (Joint Letter to Tony Blair from Human Rights Watch and Liberty), June 23, 2005, http://hrw.org/english/docs/2005/06/23/uk11219_txt.htm.

[8] *See* http://www.cageprisoners.com/articles.php?id=21295.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHMED BEN BACHA
(BELBACHA),
Petitioner,
v. Civ. A. No. 05-2349 (RMC)
GEORGE W. BUSH,
et al.,
Respondents.

ORDER

Petitioner Ahmed Belbacha, a detainee at the United States Naval Station in Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus on December 8, 2005. On July 26, 2007, Mr. Belbacha filed an emergency motion for a temporary restraining order asking the Court to enjoin the United States from transferring him from Guantanamo Bay to Algeria, his country of citizenship. Mr. Belbacha contends that it is more likely than not that he will face torture and other forms of abuse from radical Islamist groups in Algeria who oppose his prior service in the Algerian military and his prior employment at a company owned by the Algerian government.

In *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), *cert. granted*, 75 U.S.L.W. 3707 (June 29,

2007), the Court of Appeals held that the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 ("MCA"), deprives this Court of jurisdiction to hear petitions for habeas corpus brought by Guantanamo detainees, that the deprivation of jurisdiction applies to petitions pending at the time the MCA was passed, and that the deprivation of jurisdiction does not violate the Suspension Clause of the Constitution. The Court also noted that Section 7(a)(2) of the MCA deprives this Court of jurisdiction to "hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." *Boumediene*, 476 F.3d at 985-86.

Mr. Belbacha argues that, despite *Boumediene*, this Court has jurisdiction to hear his motion for a temporary restraining order because (1) the Supreme Court has granted certiorari in *Boumediene*, which puts the ongoing validity of that decision in doubt; (2) the D.C. Circuit has withdrawn the mandate in *Boumediene*, which indicates that the Circuit no longer believes that this Court should dismiss habeas petitions pursuant to that decision; and (3) district courts always have jurisdiction to protect their jurisdiction, and thus this Court can enjoin Mr. Belbacha's transfer to Algeria to ensure that it has jurisdiction to adjudicate his habeas petition should the Supreme Court reverse *Boumediene*. The United States disagrees, of course, and argues that the MCA

and *Boumediene* strip this Court of jurisdiction to consider the instant motion.

The Court finds Mr. Belbacha's arguments persuasive as far as they go, and if the question now pending were whether the Court should dismiss Mr. Belbacha's habeas petition, it may well agree with him. But that is not the question; rather, the question is whether this Court has jurisdiction to hear a motion to prevent Mr. Belbacha's transfer from Guantanamo to Algeria. And on that question the MCA is clear: the Court lacks jurisdiction over any and all non-habeas claims raised by aliens who are detained as enemy combatants. Mr. Belbacha argues that if the Court denies his motion on that basis, it will lose jurisdiction over his underlying habeas petition because Mr. Belbacha will be released from U.S. custody. The Court appreciates that point but notes that the D.C. Circuit implicitly rejected that argument when it recently denied a similar motion to enjoin the transfer of a Guantanamo detainee based on lack of jurisdiction. *See Zalita v. Bush*, Case. No. 07-5129 (Order of April 25, 2007). The D.C. Circuit presumably followed that reasoning again when it denied for lack of jurisdiction a Guantanamo detainee's motion for an order requiring the United States to provide 30 day's notice before transferring the detainee from Guantanamo. *See Hamlily v. Gates*, No. 07-1127 (Order of July 16, 2007).

The Supreme Court's recent decision to grant certiorari in *Boumediene* notwithstanding, this Court cannot ignore the plain language of the MCA and the D.C. Circuit's holding that the MCA is constitutional. As the D.C. Circuit made clear, the MCA "eliminates jurisdiction over non-habeas claims by aliens de-

tained as enemy combatants. That alone is sufficient to require dismissal even of pending non-habeas claims." *Boumediene*, 476 F.3d at 98 n.1.

Accordingly, it is hereby

ORDERED that Petitioner's Emergency Motion for Order Enjoining Transfer of Petitioner to Likely Abuse and Torture in Algeria [Dkt. No. 26] is **DENIED** for lack of jurisdiction.

SO ORDERED.

DATE: July 27, 2007 /s/

ROSEMARY M. COLLYER
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5258 September Term, 2006

05cv02349

Filed On: August 2, 2007 [1058163]

Ahmed Belbacha,

Appellant

Salah Belbacha, as next Friend of Ahmed Belbacha,

Appellee

v.

George W. Bush, et al.,

Appellees

BEFORE: Sentelle, Rogers, and Brown, Circuit Judges

ORDER

Upon consideration of the emergency motion for a stay pending appeal, the opposition thereto, and the reply; and the motion for an expedited appeal schedule, it is

ORDERED that the administrative stay entered by this court on July 30, 2007, be dissolved. It is

FURTHER ORDERED that the motion for a stay pending appeal be denied. *See Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir.), *cert. granted*, 127 S. Ct. 3078 (2007); *see also Maxwell v. Snow*, 409 F.3d 354, 358 (D.C. Cir. 2005) ("[T]his court is bound to follow circuit precedent until it is overruled by an en banc court or the Supreme Court."). It is

FURTHER ORDERED that the appeal be heard on an expedited basis in accordance with 28 U.S.C. § 1657(a). The Clerk is directed to enter a standard briefing schedule.

Per Curiam